

SANDLER, REIFF, YOUNG & LAMB, P.C.

January 11, 2012

Mr. Thomas Hintermeister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Hintermeister:

This letter will serve as the response of the Minnesota Democratic-Farmer-Labor Party ("MDFL") to the Interim Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the MDFL's financial activities for 2007 and 2008.

The response to each of the Audit Division's two findings is as follows:

Finding #1

The Interim Audit Report's ("IAR") first finding involves the correction of the disclosure of financial activities for the committee's reports for calendar years 2007 and 2008. The finding stems from two types of issues. First, the Audit Report requests correction of certain items and cash on hand amounts due to errors made in committee reports during the 2008 election cycle. The committee has filed amendments to correct these errors.

The other portion of the Audit Reports finding involves the Audit Division's view that the MDFL's use of an escrow account to transmit payroll from both its federal and non-federal accounts should be fully disclosed on the committee's federal reports. This is not an issue of first impression for the Commission. The Commission recently addressed this issue in the audit of the Georgia Federal Elections Committee ("GDP") for the 2006 election cycle. In that audit, the GDP had created an escrow account for the purposes of facilitating a single payment to a payroll company for both federal and non-federal accounts. In this audit, the Audit Division took the position that this payroll transmittal account was a federal account and that all activity, both federal and non-federal must be disclosed by the committee. The Commission disagreed with the Audit Division and determined that the non-federal portion of the activity was not required to be reported by the GDP on its federal reports.

As in the case of the GDP, the MDFL established a payroll account to facilitate the payment of payroll expenses. It is believed that this account was established sometime during the 1970's and has been used ever since to facilitate payroll payments which have been handled in-house by the MDFL. The account was intended to act solely as a pass through account and was not intended to pay any expenses other than the payroll expenses for which other MDFL accounts would remit sufficient funds to pay those expenses.

It should be noted that this account had been established well before the Commission's implementation of its allocation regulations in 1991 (former 11 C.F.R. § 106.5) and the passage of the Bipartisan Campaign Reform Act of 2002. Each of these events changed the way that party committees paid for federal and non-federal expenses. Despite these changes, the MDFL (much like the GDP) believed in good faith, that the 100% non-federal payroll expenses need not be disclosed on federal reports. During the 2008 election cycle, the MDFL maintained two types of employees. First, it had employees that were paid 100% federal, and second, it had employees that were paid 100% non-federal.¹ Other than payroll expenses, the only other expenses paid for by the payroll account were certain retirement benefits that were deducted from employee payrolls. All other benefits were paid from non-payroll accounts of the MDFL.

Based upon the Commission's conclusion in the GDP's Audit of its 2006 activity, the MDFL does not believe that is required, under these circumstances, to report the transmittal of the non-federal amounts paid to its payroll account. Similar to the GDP, the MDFL does not intend, nor does it believe, that this transmittal account is a federal account of the committee. To require disclosure of these amounts would result in an artificial increase in the disclosure of its federal activity, which it believes would be burdensome for the committee and confusing to the readers of the MDFL's reports. To be sure, these funds are derived solely from non-federal accounts, represent exclusively non-federal activity and were never commingled with other federal accounts of the MDFL. Thus, the MDFL's circumstances were materially identical to the GDP in its audit and the Commission should conclude, similar to the GDP Audit Report, that the payroll account was not a federal account.²

For the reasons stated above, the MDFL will not be amending its reports to include the non-federal payroll account activity at this time.³ It should be noted that the amendments that have been filed, including all financial activity and cash on hand fully comply with all other recommendations in Finding #1.

¹ Unlike the GDP, the MDFL did not allocate any payroll disbursements to employees between federal and non-federal funds during the 2008 election cycle. The 100% non-federal employees include those MDFL employees who spent 0% of their time in a given month on federal elections or federal election activities, as well as employees of the two legislative caucus committees for the Minnesota legislature. For the two caucus committees, the MDFL is reimbursed by these committees for payroll expenses and the reimbursement are deposited into the MDFL's non-federal accounts.

² It should be noted that, in 2011, the MDFL has established a separate payroll account to exclusively pay for the non-federal employees.

³ The MDFL inadvertently made a transfer from its non-federal account, that was intended for the payroll account, to its federal account. The federal account immediately transferred these funds to its payroll account. The receipt and transfer out are disclosed in the amendments on Lines 17 and 29 respectively.

In addition, the Interim Audit Report references a potential in-kind contribution from South Clinton Street Investments, LLC in the amount of \$10,000.00 in connection with an invoice for the Four Points Sheraton in Denver, CO in September 2008. According to representatives of the LLC, the LLC was, at that time, a holding company that had an ownership interest in the hotel. A representative of the LLC has indicated to the MDFL that this payment was the correction of a mistaken mis-deposit of funds into the LLC that should have been applied to the MDFL's Fnlm and was not an in-kind contribution to the MDFL. A copy of the communication with the LLC has been provided to the Audit Division.

Finding #2

The IAR report's second finding involves the overfunding of the MDFL's federal account by its non-federal accounts. The IAR concludes that the MDFL's non-federal account overfunded the federal account by \$277,103. Based upon our review, no overfunding occurred. The actual amount of underfunding is \$145,609. Our adjustment to the IAR's finding is as follows:

1) Underfunding of non-federal portion of shared activity

The IAR states that that MDFL underfunded allocable expenses by \$13,748 for the 2008 cycle. The IAR's analysis of this first factor is based solely upon a review of un-amended reports filed by the MDFL. Using the IAR's methodology, after the filing of amendments, the actual amount of under-funding per the MDFL's reports is actually \$136,645.

2) Overfunding of non-federal payroll

The IAR states that the MDFL overfunded non-federal payroll by \$86,363. Based upon our own internal analysis, we believe this amount to be \$ 66,363. The Audit Division has been provided with our internal spreadsheets that justify this amount.

3) Unsupported transfers from non-federal accounts

For purposes of our analysis, the MDFL has rolled this separate analysis into our findings in section 1 above since most of these unsupported transfers relate to un-reported transfers from MDFL non-federal accounts to regular federal accounts to pay for the non-federal share of benefits payments. These payments are now disclosed as allocable expenditures on Schedule H4 in amended reports. It should be noted that, to the extent that any transfer lacks documentation, it cannot be disallowed solely on that basis since FEC regulations do not require that allocation transfers be documented, but rather, that such transfers are made within a 70 day window of any allocable expense. 11 C.F.R. § 106.7(f)(2). Consistent with the Commission's methodology used in the IAR, any over-transfer of non-federal funds during the 2008 cycle would be subsumed within the amount in the analysis in section 1 above.

4) Reported federal activity paid from non-federal accounts

The IAR states that the MDFL may have paid for \$51,105 in federal activity from its non-federal accounts. The MDFL has provided documentation that demonstrates that \$31,529 of this amount was properly paid for from the non-federal account. The MDFL concedes that \$19,576 of this amount should have been paid for from federal funds. Of that, \$2,791 is 100% federal activity, and the remaining \$16,785 is allocable activity (36% federal, 64% non-federal). Therefore the total amount that should have been paid from Federal funds is \$8,833. The MDFL has provided the Audit Division with spreadsheets that justify the MDFL's conclusion.

5) Other Issues

The MDFL has identified two other categories of federal activity that should serve to reduce the overfunding finding. First, the MDFL had made transfers, for cash flow purposes, from its federal accounts to its non-federal accounts during the 2008 cycle. Since these transfers served to reduce the amount of federal funds available to the MDFL, it should be included in the analysis for this finding. Second, the MDFL has identified \$13,737 in 100% non-federal expenses within the various categories for disbursements cited in Finding 1 that were paid from the MDFL's federal accounts. The MDFL has provided the Audit Division with spreadsheets that justify the MDFL's conclusion. These expenses could have been permissibly been paid for from the non-federal accounts and, therefore, should also reduce the amount of the overfunding finding.

The MDFL has also identified two deposits from the 5th Congressional District DFL that should have been deposited into its non-federal account. These two deposits, totaling \$18,027, were included in the Commission's analysis regarding unreported receipts but not included in the over-transfer analysis. Notwithstanding, we have included these mis-deposits below.

Based upon the above, the MDFL believes that it under-funded non-federal activity as follows:

Under-funding of non-federal portion of shared activity	(\$ 136,645)
Over-funding of non-federal payroll	66,363
Unsupported transfers from non-federal accounts	0
Reported federal activity paid from non-federal accounts	8,833
Transfers from Federal account to non-federal account	(88,450)
Non-Federal activity paid for from Federal account	(13,737)
Mis-deposit of 5 th Congressional District DFL	<u>18,027</u>
Total under-funding by the non-federal account	(\$ 145,609)

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

A handwritten signature in black ink, appearing to be 'NR' or 'Reiff', written in a cursive style.

Neil Reiff
Counsel to the Minnesota Democratic-Farmer-
Labor Party